Metropolitan

April 30, 2012

Via Email (Kevin.Terry@gsa.gov) and FedEx

Mr. Kevin M. Terry
Contracting Officer
United States General Services Administration
301 7th Street, SW
Washington, DC 20407

Re: Agency-Level Protest of Selection of Preferred Selected Developer for Redevelopment of the Old Post Office Building and Annex (Solicitation # NR-73002105)

Dear Mr. Terry:

As you are aware, BP-Metropolitan Investors, LLC ("Metropolitan") competed unsuccessfully for the above referenced solicitation and opportunity to redevelop the Old Post Office Building and Annex. This letter sets forth Metropolitan's protest and requests your immediate review of the unlawful and unwise decision of the United States General Services Administration ("GSA") to award the rights to negotiate a lease for the redevelopment of the historic Old Post Office building and annex ("Old Post Office") to the Trump organization ("Trump") in response to solicitation # NR-73002105 ("Solicitation" or "RFP").

Metropolitan requests that GSA rescind the selection of Trump as the PSD, re-open the Solicitation with the competitive range of offerors who had submitted conforming bids to the Solicitation, and permit qualifying offerors the opportunity to enter into negotiations with GSA and further amend their initial bid amounts – all to the benefit of the U.S. taxpayer.

I. <u>Summary Of Legal Basis For Overturning the Award</u>

- First, despite requesting in writing that Metropolitan enter into discussions with GSA regarding specific identified weaknesses/deficiencies in the proposal, GSA failed to evaluate the terms of Metropolitan's amended offer submitted at the December 21 presentation to GSA. At the debriefing on February 29, GSA made it clear that the Metropolitan and Trump proposals were essentially rated the same, except for Trump's allegedly superior financial offer to GSA. However, despite the fact that GSA was legally required to do so, GSA (by its own admission) failed to evaluate Metropolitan's amended financial offer to GSA which was made both in writing and in the course of the presentation to GSA on December 21, 2011.

- Second, GSA failed to properly evaluate Factor 3 (Developer's Financial Capacity and Capability) of the RFP. This section required, in part, that all offerors submit "[f]or developer and development team, a statement regarding any . . . bankruptcy or loan defaults on real estate development projects." Either GSA failed to properly assess the hundreds of publicly accessible records regarding bankruptcy and loan defaults related to Trump's real estate development projects and/or Trump's proposal failed to fully disclose these bankruptcies and loan defaults, and hence did not comply with the RFP. Whichever failure occurred, it creates an insurmountable legal problem for GSA with regard to this award. The record of Trump bankruptcies indicates that Trump will be an unreliable business partner. Trump has a distinctly different posture at bid and award press conferences than it has in bankruptcy and court proceedings that emerge as a project fails. The public record reveals that Trump projects often fail, and fail with a great deal of negative publicity. In those instances of failure, Trump has often: (1) argued that Trump only lent its name to the failed project through licensing; (2) disparaged or sued the business partner in GSA's position; and/or (3) suggested the failure is the fault of someone other than Trump.

- Third, GSA failed to properly conduct a price reasonableness analysis of Trump's offer in accordance with the express requirements of the RFP. A properly conducted price reasonableness analysis would have resulted in the conclusion that the minimum base lease proposed by Trump would require Trump to obtain hotel room revenues which are simply not obtainable in the Old Post Office's location based on the concepts for the redevelopment. In fact, the Trump proposal promises up to $200 million in investment, while Metropolitan proposed a more realistic $140 million in investment; but despite Trump's promised higher level of investment, Trump unrealistically claims it would deliver much higher revenues to the GSA. In contrast, the solid Metropolitan bid is premised upon the financial participation of destination retail stores from the most prominent luxury brands, in collaboration with the operation of a Waldorf Astoria hotel. The Metropolitan retail participants are unique and exclusive to the Metropolitan proposal, and are absent in any form in the Trump offer. Instead, Trump offered two unnamed restaurants and a spa. After a final contract award, when the Trump revenues promised to GSA are found to be unachievable, the GSA and U.S. taxpayers will be left with an unrealistic economic model and another failed attempt to redevelop the Old Post Office. When GSA takes back the project in default, GSA and the U.S. taxpayers will have no choice but to "trade out" the unrealistic "great deal" promised by Trump for a far more pedestrian, or even potentially disastrous outcome.

- Fourth, GSA improperly evaluated the past performance of offerors with regard to Evaluation Factor 1 (Experience and Past Performance of Developer and Developer's Key Personnel) of the RFP. GSA's conclusion that Trump's proposal was equivalent in rating to Metropolitan's proposal was unreasonable in light of the three issues described above, as well as Trump's lack of direct development, hospitality or historic preservation expertise in Washington, especially when compared with Metropolitan's team of substantial expertise and experience in Washington. Furthermore, GSA's failure to include on the Source Evaluation Board ("SEB") on the day of the presentations even a single person with destination retail, luxury hospitality or historic preservation and architectural/design expertise is inexplicable given that the plans for redevelopment of the Old Post Office that were considered by GSA for potential award were focused on these qualifications. Indeed, GSA requested specific explanation of these areas in their letter to Metropolitan on December 13. GSA's failure to include appropriate SEB expertise at the presentation impacted GSA's ability to properly consider both the development concept and the ability to negotiate an appropriate and realistic financial return to the U.S. taxpayer.

GSA did not choose the "highest and best use" for the property in accordance with the express requirements of the RFP. GSA damaged the interests of U.S. taxpayers by accepting an unrealistic bid from Trump. GSA failed to evaluate revised economic bids it received from Metropolitan and at least one other bid team, and improperly scored the Trump bid. Any one of these legal objections is sufficient of itself to require the overturning of the award. The U.S. taxpayer interests will be best served by taking non-legal corrective action at this juncture.

II. GSA Corrective Action Is Warranted For Other Business Reasons

Setting aside for the moment the profound legal reasons why GSA must take the corrective action described above, GSA's award to Trump exhibited a fundamentally flawed business judgment by not asking for best and final offers ("BAFOs") from Metropolitan and other bid teams that GSA has acknowledged were the closest competitors to Trump for award. By GSA's own acknowledgement, the financial offer must follow a sound business concept. GSA, instead, improperly scored the Trump proposal and hastily elected to choose the highest ground rent absent a sound economic and business foundation. While this is not a "legal violation" because GSA did not have a legal duty to ask for BAFOs—it is a violation of sound business judgement. The new GSA leadership should take the opportunity presented now to fix the fundamental flaw in GSA's decision making that will deprive the GSA and U.S. taxpayers of the best value and a sound development concept. On information and belief, other offerors fully expected further negotiations to be conducted by GSA after GSA had availed itself of the opportunity to better understand the different concepts presented by the offerors in the December presentations. By not asking for BAFOs from the qualified offerors for a multi-decade lease and redevelopment agreement with a potential value in the hundreds of millions of dollars, GSA has condemned the U.S. taxpayers to the initial offer and flawed concept of Trump without further discussion or negotiations with the other qualified offerors. This poor business judgement violates every tenet of good selection and bargaining practices.

Metropolitan has been told by GSA that discussions took place between GSA and at least three of the closest teams: (1) the Metropolitan team, which included Hilton Worldwide, with over 3,843 hotels including the historic Waldorf Astoria in NYC; (2) the Hyatt team, with over 483 properties; and (3) the Marriott team, with over 3,400 properties. Instead of negotiating with offerors, GSA simply awarded this iconic, historic but troubled property to Trump (which operates or licenses the Trump name to fewer than 10 hotels, a mere fraction in terms of quantity or operating history when compared with the competitors), based on unrealistic projected revenues that will never be paid to the U.S. taxpayer but that are listed in Trump's initial offer. The failure to seek BAFOs from offerors in the competitive range was both inconsistent with prior awards made by GSA (such as the Hotel Monaco development in 2003) and leaves tens of millions of dollars on the table from other offerors, such as Metropolitan, who fully expected the opportunity to modify their offer terms to GSA after further detailed discussions. The undisputable fact that GSA went so far as to ignore Metropolitan's amended financial proposal is arbitrary and capricious, as is its failure to obtain BAFOs. One failure is legally cognizable, but both together create an immediate need for agency voluntary corrective action.

III. <u>Conclusion</u>

GSA's first attempt years ago to redevelop the Old Post Office left the GSA and the U.S. taxpayer with tenants who did not pay rent for years, and with facilities that are now empty or underperforming, all in the prestigious stretch between the White House and the U.S. Capitol on the most important street in America. This lack of proper business judgement led to the waste of a taxpayer asset and a national architectural treasure. This continued pattern of poor judgment must be corrected.

If this award to Trump is not overturned, GSA will be on its way to another, even more devastating failure for this historical landmark with a business partner whose history of repeated failure demonstrates that it cannot be counted upon to deliver what it promises.

Metropolitan is eager to re-engage with regard to its proposal for the Old Post Office and looks forward to GSA's prompt response and action with regard to this matter.

Sincerely,

[redacted]
Manager
BP-Metropolitan Investors, LLC